IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8788 of 1989

For Approval and Signature:

Hon'ble MR.JUSTICE K.A.PUJ

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

PRESIDENT

Versus

STATE OF GUJARAT

Appearance:

1. Special Civil Application No. 8788 of 1989

MR FEROZ H. PATHAN on behalf of MR MUKUND M DESAI for Petitioner No. 1-2

NOTICE SERVED for Respondent No. 1-2

MR MA BUKHARI, AGP for Respondent No. 3

MR PRASHANT MANKAD on behalf of MR YOGESH S LAKHANI for Respondent No. 4-5

CORAM : MR.JUSTICE K.A.PUJ

Date of decision: 28/03/2003

ORAL JUDGEMENT

The petitioners, in this petition, have challenged the legality and validity of the judgement and order dated 1-5-1989 and 29-11-1989 passed by the Tribunal constituted under the Gujarat Secondary Education Act, 1972, inter alia, directing the petitioner-School Management, to pay the respondents No.4 and 5 compensation equal to six months' salaries with allowances for the first five years and further more, they will be entitled to four months basic pay for the remaining four years of the service in the petitioner-school.

2) The petitioners have further challenged the legality and validity of Regulation 33 framed under Section 54 of the Gujarat Secondary Education Act, as the same has put unreasonable restriction on the petitioners to run charitable Institution, for which, it was established.

3) The case of the petitioners is that the respondents No.4 and 5 were appointed in the petitioner-school in the year 1977. Prior to that the respondent No.4 was in service since 1968 as Assistant Teacher then at Denop, where he joined in 1967 as supernumerary teacher from his school. He was relieved because of class reduction and was declared surplus teacher in 1977. On his being surplus in this manner, he was absorbed in the petitioner-school with effect from 25-8-1977. He was continued in petitioner-school till 1987. As far as respondent No.5 is concerned, he initially joined secondary school with effect from 1960. The last school, which he had joined prior to the petitioners' school was Navchetan High School, where he was reappointed in 1968. From that school, he was declared supernumerary with effect from 13-9-1976. He joined the petitioner school and was declared surplus in 1986 by the order of District Education Officer, dated 16-9-1986.

4) It is further stated that respondents No.4 and 5 have preferred application No.180/1987 and 185/1987 before the Gujarat Secondary Education Tribunal, which came to be heard by the learned Judge of the Tribunal in 1989, wherein it was held that the respondents No.4 and 5 were entitled to compensation as per Regulation 33, without even considering the argument canvassed by the petitioners. As the learned Judge of the Tribunal did not permit the petitioner to lead any evidence, the petitioner filed Review Application before the Tribunal bearing No.394/1989 and 395/1989, wherein it was pointed

out that the petitioners were bound to pay compensation as there was already an amendment before the Tribunal passed an order dated 1-5-1989. It was further stated in the Review Application that respondents No.4 and 5 have not lost anything because they have been accommodated in the sister concerns run by the petitioner trust and therefore, they were not eligible to compensation. However, the Tribunal did not consider all these aspects and came to the said conclusion vide its order dated 29-11-1989, rejecting the said Review Applications filed by the petitioners.

5) Being aggrieved by the said order of the Tribunal, the petitioners filed the present petition before this Court by invoking provisions contained in Article 226 of the Constitution of India.

6) The petition was admitted on 26-12-1989 and while granting interim relief, this Court has passed an order on 22nd March, 1990, which reads as under :

"Having heard the learned Advocates of parties, interim relief is granted to the extent that the petitioners will deposit in this Court, within four months from today, 40% of the amount payable by them to the concerned teachers under the impugned order of the Tribunal. The said amount, when deposited, will be permitted to be withdrawn by the respondent Nos.4 and 5 on their filing undertakings in this Court to refund this amount with 12% interest in case the petition succeeds and further undertaking to the Court to raise no objection to the petitioners adjusting this amount against their retirement benefits like provident fund, gratuity etc. which may be lying with them-the management. The order of the Tribunal for the balance of 60% will remaine stayed. In case the petition fails, balance of 60% with 12% interest will have to be paid by the petitioners to respondents No.4 and 5."

7) The respondents No.4 and 5 have filed affidavit in reply, wherein averments and submissions made in the petition were strongly resisted. It was further pointed out that certain false statements were made by the petitioners and certain facts were suppressed. While dealing with parawise averments made in the petition, the respondents No.4 and 5 had pointed out that the facts stated in the petition were not correct. It was further stated that Regulation 33 did not confer any benefit to the teachers as contended by the petitioners. It was

further stated that by virtue of the Resolution dated 18th April, 1988 amendment was made in Regulation 33. However, the said amendment is not retrospective. It has come into effect from the date of Resolution. It was further submitted that the respondents No.4 and 5 were declared as surplus teachers by an order of the District Education Officer dated 16-9-1986, whereas the amendment has been made on 12-4-1988. Hence, the amendment has no effect so far as the respondents No.4 and 5 are concerned and they are entitled to get the compensation as per Regulation 33 and it was rightly decided by the Secondary Education Tribunal in application No.180/1987, 185/1987, 384/1989 and 385/1989.

8) Heard Mr.Feroz H.Pathan, learned advocate appearing for Mr.Mukund Desai, learned advocate for the petitioner. Mr.M.A.Bukhari, learned Assistant Government Pleader for respondent No.3 and Mr.Prashant Mankad, learned advocate appearing for Mr.Yogesh Lakhani, learned Advocate for respondents No.4 and 5.

9) I have considered both the orders passed by the Tribunal and I have also considered the submissions made by the learned advocates appearing for respective parties. I have also gone through the Resolution passed by the Government of Gujarat, Education Department on 18th April, 1988 making amendment in Regulation 33 of Gujarat Secondary Education Regulations, 1974. It is the main contention of Mr.Pathan, learned advocate appearing for the petitioner that the amendment made in Regulation 33 by virtue of Resolution dated 18-4-1988 is having retrospective effect, as on the date when the Tribunal has decided the matter this amendment was very much in force and as per the said amendment, the case of the employees, who are declared as surplus/additional in number are not entitled to compensation under Regulation 33 of the Gujarat Secondary Education Regulation. On the other hand, Mr.Prashant Mankad, learned advocate for respondent Nos.4 and 5 has submitted that in the Resolution it is not specifically stated that it has come into effect with retrospective date. Unless and until, it is specifically stated that the Resolution has come into effect on such and such date, it is normally presumed that the Resolution is prospectively applied. Since this being a settled position in law, I am of the view that the amended provision contained in Regulation 33 would not cover the case of the respondent Nos.4 and 5. On the date when the respondents were declared as surplus, this amendment was not there and hence on the basis of this Resolution, the compensation cannot be

denied to the respondents No.4 and 5. The Tribunal has considered this aspect, not only in the main matter but also in the Review Application. Since this Tribunal is specially constituted for dealing with education matters of the teachers and since there being no error committed by the Tribunal or finding arrived at by the Tribunal cannot be said to be unreasonable or perverse in any manner whatsoever, I am of the view that there is no justification to interfere in the order passed by the Tribunal while exercising extraordinary writ jurisdiction under Article 226/227 of the Constitution of India. Since arguments of both sides confined to this point only and no other point is urged and since I do not find any substance or merit in the petition, the petition is dismissed. Rule is discharged with no order as to costs.

10) The petitioners are directed to comply with the interim order passed by this Court on 22nd March, 1994 and to pay the balance amount of 60% with interest at the rate of 12% as directed earlier, within one month from the date of receipt of certified copy of this judgement or writ of this Court, whiever is earlier.

This petition is accordingly dismissed.

(K.A.Puj, J.)
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